IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

WRIT PETITION NO. 2748 OF 2004

M.P. Arya Vidya Sabha & Anr. ... Petitioner

Vs.

Smt. Sherekar P.V. & Ors. ... Respondents

Mr. A.Y. Sakhare, Sr. Advocate with Ms. Anupama B.Shah for Petitioner.

Mr. Binay K. Mishra i/by Mihir Desai for Respondent No. 1.

Ms. S. Shreedharan, A.G.P. for Respondnet Nos. 2 and 3.

CORAM : F.I. REBELLO,J.
DATED : NOVEMBER 03, 2004

P.C.

. Rule. By consent heard forthwith.

. The Petitioner management by the present petition has impugned the order of the School Tribunal dated 29.1.2004 whereby the learned Tribunal has allowed the appeal preferred by Respondent no. 1 thereby directing the petitioners herein to reinstate the Respondent No. 1 as full time Assistant Teacher and pay her arrears of salary including allowances from the date of termination of her services untill the date of reinstatement. During the course of the proceedings, the petitioners and Respondent No. 1 evidenced the decision for a settlement.

. On behalf of the Respondent Nos. 2 and 3 an

affidavit has been filed by Chandrakant Damle, Deputy Education Inspector opposing grant of any reliefs. It is also set out that the Petitioners had deliberately proceeded not to conduct enquiry under the provisions of Rule 33 and their action in terminating services was high handed. It is further submitted that Respondent Nos. 2 and 3 are not liable to pay any arrears of salary even pursuant to the order of the tribunal directing reinstatement of Respondent No. 1 with full back wages.

2. On consideration of the contentions as raised by the petitioner, Respondent Nos. 2 and 3 and the provisions of the Act and rules, it will be clear that the Respondent No. 1 was employed against a sanctioned post. In other words, if Respondent No. 1 had continued in the post, Respondent Nos. 2 and 3 would be bound to release salary grants for the said post. The only objection raised is that the termination was without the approval of the Respondent Nos. 2 and 3 and as Respondent No. 1 has not worked during the period, Respondent Nos. 2 and 3 are not bound to release the salary. The facts which have come on record is that in the place of Respondent No. 1 petitioners engaged another teacher whose salary was paid from their own resources and no demand whatsoever was made on Respondent Nos. 2 and 3. At the relevant time, appeal preferred by Respondent No. 1 was pending

before the School Tribunal. My attention has also been invited on behalf of the Petitioners by their learned counsel to the resolution of the Government of Maharashtra dated 14.3.1978. By that resolution, Government has resolved that whenever the Management of non-Government school has reinstated the employee in pursuance of the order of the Appellate Authority and if the arrears of salary and allowances of any portion thereof remains unpaid, till date of reinstatement, this should be directly paid by the Education Officer/Education Inspector under the scheme of Payment of salary and allowances. This will be subject to the contention that the salary and allowances paid to substitute, if any appointed by the Management in place of the employee whose services were terminated, have not been paid by the Department and the payment of arrears of salary and allowance of the employee who has been reinstated would not involve additional expenses to the Government over and above the expenditure which would in any case would have been incurred on the salary of the total teaching and non teaching staff of the school. Considering the above, it will be clear that as in the instant case, the Respondent NO. 1 has been directed to be reinstated pursuant to the order of Appellate Authority, and Respondent Nos. 2 and 3 have not released any salary grants in terms of the Clause 1 of the Resolution to the substitute. The release of salary would not

involve any additional expenditure as it would involve normal salary grant which would have been released to the Petitioner for payment to Respondent No. 1 if in service.

. In my opinion, therefore, the case of Respondent No. 1 is clearly governed by Resolution dated 14.3.1978. Once the only objection raised on behalf of the Respondent Nos. 2 and 3 is rejected, the only question is whether there is any merit in so far as challenge raised by the petitioners to the order of the Appellate Authority directing reinstatement of the Respondent No. 1. From the impugned order, I do not find that the order discloses any error of law apparent on the face of the record. The rules are clear. The services of a permanent teacher could not have been terminated on the ground of abandonment without conducting enquiry. The order of the tribunal will have to be upheld.

3. The Petitioners and Respondent no.1 however, have come to an agreement whereby they have resolved their differences. The Minutes of the order signed on behalf of the Petitioners and Respondent No. 1 have been taken on record and marked "X" for identification. Undertaking in the Minutes accepted. The effect of the said Minutes would be that the liability of Respondent Nos. 2 and 3 to release salary grants in favour of

Respondent No. 1 is reduced to 50%. Similarly the petitioners have undertaken that they will not conduct fresh enquiry against Respondent No.1 who will be reinstated.

4. In the light of that, Rule made absolute in terms of the minutes and the following terms :

1. The Judgement and order dated 29.1.2004 passed by the Presiding Officer, School Tribunal, Mumbai in Appeal No MUM/24/1999 is modified to the following extent :

a. As the Petitioners have already re-instated the Respondent No. 1 as full Asst. Teacher w.e.f. 14.6.2004. The Respondents No. 2 and 3 shall pay to the Respondent No. 1, 50% of the backwages for the period from 1.3.1999 to 13.6.2004 on the basis of the revised scales.

b. The Pay Bills for the above shall be submitted to the Education Department within 8 weeks by the Petitioners.

c. The backwages ordered will be paid by the Respondents No. 2 and 3 to the Respondent No. 1 within 8 weeks thereafter.

d. The Respondent No. 1 will be treated as in continuous service from the date of her original

appointment.

e. Respondent No. 1 will not have and will not claim any further amount by way of backwages from the Petitioner or Respondent No. 2 & 3.

f. The Dispute which ultimately led to the termination of service of the Respondent No. will be treated as amicably settled and no punitive steps shall be taken against the Respondent No. 1.

. The learned counsel for Respondnet Nos. 2 and 3 seeks stay of the order. In my opinion, no stay can be granted. Application for stay rejected.

(F.I. REBELLO,J.)